

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6595

PETITION OF MANIJEH VEDADI

OPINION OF THE BOARD

(Hearing Date: January 16, 2019)

(Effective Date of Opinion: January 25, 2019)

Case No. A-6595 is an application by Manijeh Vedadi for a variance of 3.60 feet to allow an existing garage to remain within 3.40 feet of the right side lot line. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.2.c of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on January 16, 2019. Petitioner Manijeh Vedadi appeared in support of the petition, along with her brother Khosro Vedadi and surveyor Fitzroy Bertrand. Neighbors Van Tipton (515 Copley Lane), John Elgin, Jr. (518 Copley Lane), and Mark Fuhrmann (700 Copley Lane) appeared in opposition, along with Daniel Wilhelm, President of the Greater Colesville Citizens Association.

Decision of the Board: Requested Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 6, Block 8, Paint Branch Farm Subdivision, located at 523 Copley Lane, Silver Spring, Maryland, 20904, in the RE-1 Zone.
2. The Statement of Justification states that the home on the subject property was constructed in 1959, and that the Petitioner did not purchase the property until 1983. It states that in addition to the subject property, the Petitioner also owns Lot 5, which is "in front of" the subject property, and that the Petitioner has been "paying taxes on my two

properties separately for a long time." The Statement indicates that the Petitioner recently learned that the house on Lot 6 is too close to the shared property line with Lot 5, and that she either had to cut approximately four (4) feet off of her garage, or seek a variance. The Petitioner thus requests a variance to make the house "legal and safe." She indicates in her Statement that cutting the garage would be "an eyesore to the neighborhood," and that the grant of the requested variance would not result in "intruding or changing any of [her] neighbors' properties line on the left, right and back." See Exhibit 3.

3. At the hearing, the Petitioner's brother, Khosro Vedadi, testified that his sister Manijeh Vedadi has owned the subject property since 1983, and that the property contains a custom-built home, constructed in 1959. He testified that when Montgomery County approved this home, it was somehow too close to the property line shared with Lot 5, which is also owned by the Petitioner. Mr. Vedadi testified that in investigating the possibility of selling either Lot 5 or the subject property, they went to the County's Department of Permitting Services ("DPS") and were told that in order to make the property legal, they would either have to cut the corner off of the existing garage or obtain a variance. He testified that the official at DPS told them that they were grandfathered and that the Board should grant them a variance.

Mr. Vedadi testified that while it was possible to remove the corner of the garage, this would ruin the appearance of what he described as a beautiful property, and would make the neighborhood ugly. He testified nevertheless that they had received an estimate of the cost to remove the offending corner, and that it would be over \$20,000. He testified that the existing house is not bothersome to the neighbors, and that the variance was for the existing house, not new construction. He stated that they will demolish four or five feet of their existing garage if they need to, but that that is not the correct decision.

Mr. Vedadi testified that the Petitioner has an easement across Lot 5 for a driveway to access the subject property. In response to concerns about this expressed by neighboring property owners, Mr. Vedadi testified that any future use by the Petitioner of the subject property or of Lot 5 would be in accordance with all Montgomery County requirements.

4. In response to a Board question asking if the lot line between the subject property and Lot 5 could be moved to eliminate the need for a variance, the Petitioner's surveyor, Fitzroy Bertrand, after originally indicating that this could be done, testified that he did not believe that was an option upon learning the actual sizes of the lots. In response to concerns expressed by neighboring property owners regarding parking for and access to the subject property, Mr. Bertrand testified that based on his 20 years of experience, he believed the issue of parking could with dealt with in accordance with County regulations. He testified that Lot 5 had been designed and accepted as a buildable lot.

5. Dan Wilhelm expressed his opposition to the grant of the variance, and read a letter of opposition into the record. See Exhibit 10. He testified that the front of the Petitioner's house faces Copley Lane. He testified that he believed that the Petitioner

needs both side and front setback relief. He stated that Monocacy Drive is a paper street which was never constructed and contains a flowing stream. Mr. Wilhelm expressed concern that that driveway to the Petitioner's house traverses Lot 5, and that the turnaround/parking area may exceed the usage allowed by the Petitioner's easement. He testified that he foresaw issues if Lot 5 were sold, and that the Petitioner could eliminate her problems by consolidating the subject property and Lot 5 into one lot.

6. John Elgin testified that he agreed with Mr. Wilhelm, stating that the Petitioner could have the subject property and Lot 5 re-deeded into one large lot. He testified that when these properties were originally built, they were on well and septic. He testified that he did not know if the subject property was still on septic, and that he was concerned about the location of the drainfield for the septic system and the potential impact of that on any future use of the two properties.

7. Mark Fuhrmann testified that he is concerned about the future use of both the subject property and Lot 5. He testified that if the lot line between the two properties were re-drawn to eliminate the need for a variance, Lot 5 would become substantially less than one acre, which he stated is not suitable for a buildable lot. He stated that his main concern is that the only reason for the Petitioner to seek this variance is facilitate a sale of Lot 5.

FINDINGS OF THE BOARD

Based on the binding testimony of Mr. Vedadi and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the Petitioner's house, which was constructed in 1959 after the property was subdivided, and which encroaches on the required side lot line setback, is a nonconforming structure. Thus the Board finds that this application, which requests that this existing structure be permitted to remain in its current location, satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner purchased the subject property in 1983, and therefore is not responsible for the 1959 location of the existing home on the property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of Mr. Vedadi and the Justification Statement in the record at Exhibit 3, that without the grant of the requested variance, the only way for the Petitioner to achieve full compliance with the Zoning Ordinance would be to remove a four foot corner from her existing garage, a garage which was part of this 1959 custom-built home when she purchased the property in 1983. The Board further finds that removal of the corner of this structure, which has existed in its present location for at least 35 years and presumably for nearly 60 years, would render conformance with the Zoning Ordinance unnecessarily burdensome and do substantial injustice to the Petitioner, thus constituting a practical difficulty, and that the grant of the requested variance, necessary to allow this structure to remain in place, is the minimum necessary to overcome this practical difficulty.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the requested variance will allow the continued residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the White Oak Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

Despite the testimony of persons opposed to the grant of this variance, most of which focused on potential future use of the subject property or abutting Lot 5, the Board can find no evidence that granting the requested variance, which does not permit new construction but rather allows an existing structure to remain where it has been for decades, will adversely affect the use and enjoyment of abutting or confronting properties. The Board notes that Mr. Vedadi testified that any future use by the Petitioner of the subject property or of Lot 5 would be undertaken in accordance with all Montgomery County requirements. Thus the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance for the existing structure is **granted**, subject to the following condition:

1. Petitioner shall be bound by the testimony of her brother and by the exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd and Katherine Freeman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of January, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.